

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

PEBBLE LIMITED PARTNERSHIP,	)	
	)	
	)	
	)	
vs.	)	
	)	
ENVIRONMENTAL PROTECTION	)	
AGENCY, et al.,	)	
	)	
	)	No. 3:14-cv-0171-HRH
Defendants.	)	
_____	)	

SCHEDULING AND PLANNING ORDER

I. Meeting of Counsel

Based upon information available to the court through a scheduling and planning conference report<sup>1</sup> completed by the parties pursuant to Rules 16 and 26(f), Federal Rules of Civil Procedure, Local Civil Rule 16.1, and, if one was held, the scheduling and planning conference, this order for the pretrial development of the case is entered pursuant to Rule 16(b), Federal Rules of Civil Procedure.

II. Pre-Discovery Disclosures

The information required by Rule 26(a)(1), Federal Rules of Civil Procedure:

- A.     \_\_\_     Has been exchanged by the parties.
- B.     ✓     Shall be exchanged by the parties on or before July 31, 2015.

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<sup>1</sup>Docket No. 135.

- C. ☒ Preliminary witness lists:
1. ☐ Have been exchanged by the parties.
  2. ☒ Shall be exchanged by the parties on or before July 31, 2015.

Counsel for each party must contemporaneously prepare and maintain a written record of all disclosures and supplementation of disclosures or responses made to requests for discovery under Rule 26(a) and (e), Federal Rules of Civil Procedure. Unless required in support of a motion or by order of the court, disclosures and supplemental disclosures are not to be filed with the court.

III. Contested Issues of Fact and Law

- A. ☒ Nothing further is required.
- B. ☐ The parties have either failed to submit a preliminary statement of issues or have submitted an unsatisfactory preliminary statement of issues. The parties shall meet, prepare, and file a satisfactory preliminary joint statement of issues on or before \_\_\_\_\_.

IV. Discovery Plan

Discovery shall be conducted in accordance with Rules 26 through 37 of the Federal Rules of Civil Procedure, Local Civil Rules 30.1, 32.1, and 37.1, and the discovery plan contained in the status report of the parties except as otherwise provided below.

- A. ☒ Issues requiring discovery.
1. ☐ Nothing further is required.

2. ☒ Plaintiff and defendants have set out their respective issues requiring discovery. Although this is essentially an Administrative Procedure Act case, the parties appear to be in agreement that substantial discovery may be necessary due to the nature of the claims made by plaintiff based upon the Federal Advisory Committee Act. The parties have signaled their potential disagreement about the scope of discovery, and plaintiff has recently served and filed a discovery motion pursuant to Rule 26(b)(2)(A), Federal Rules of Civil Procedure. The court will address the pending motion when it is fully briefed. Except in unusual circumstances, the court will not be inclined to entertain oral argument on discovery motions. The court will rely on counsel for the parties to timely confer with respect to the scope and management of discovery, and to put their disagreements (if any) before the court in a timely and appropriate fashion. When it shall appear to counsel that discovery matters might most efficiently be addressed by means of an informal, telephonic conference with the court, counsel may jointly make such a request.

B. ☒ Preserving discovery information.

1. ☐ There is no indication that this will be an issue.

2.     ☒     The parties disagree as to whether defendants have or have not failed to preserve emails and text messages relevant to this case. The parties have not suggested that there is any ongoing problem with the preservation of data that may be relevant to this case. The question of whether or not there has been spoliation of evidence in this case is an issue which will be dealt with when and if put before the court in a motion.
- C.     ☒     Discovery or disclosure of electronically stored information shall be handled as follows:
1.     ☒     The parties may proceed as they have proposed.
2.     ☐     *[Other]*
- D.     Claims of privilege or protection of trial preparation materials shall be handled as follows:
1.     ☐     There is no indication that this will be an issue.
2.     ☐     The parties have entered into a confidentiality agreement.
3.     ☒     The parties shall submit their proposed Privacy Act protective order and confidentiality agreement on or before July 31, 2015.
- E.     Expert witness disclosures in accordance with Rule 26(a)(2) shall be made:
1.     ☐     By all parties on or before \_\_\_\_\_.
2.     ☒     By plaintiff(s) on or before February 29, 2016.

3. ☒ By defendant(s) on or before March 31, 2016.
4. ☒ Plaintiff's rebuttal reports on or before April 30, 2016.
5. ☒ Defendants' rebuttal reports on or before May 31, 2016.
6. ☒ Disclosure of witnesses who do not provide a written report pursuant to Rule 26(a)(2)(C), Federal Rules of Civil Procedure, shall be made on the day that a party's initial expert reports are due.

F. Disclosures and discovery responses shall be supplemented in accordance with Rule 26(e):

1. ☐ At intervals of  days; and final supplementations shall be served 60 days before the close of fact discovery.
2. ☒ As new information is acquired, but not later than 60 days before the close of discovery.

The disclosures required by Rule 26(a)(3), to the extent not covered by this order, will be addressed by the court in an Order for Pretrial Proceedings and Final Pretrial Conference, which the court will issue concurrent with setting this case for trial.

G. A final witness list, disclosing all lay and expert witnesses whom a party may wish to call at trial, shall be served and filed not later than: 45 days prior to close of fact discovery, and 45 days prior to close of expert discovery, respectively. Only those witnesses disclosed in a timely filed witness list will be permitted to testify at trial.

H. Discovery shall be scheduled so as to be completed by:

1. ✓ As to all fact discovery, on or before June 30, 2016.
2. ✓ As to all expert discovery, on or before August 1, 2016.
3. \_\_\_\_ As to all discovery, on or before \_\_\_\_.

If discovery is not completed by the date or dates above specified, counsel may, as provided by D. Ak. L.R. 16.1(c)(3)[A], stipulate to a single continuance of no more than two months for the completion of same, provided that any such stipulation shall state precisely what discovery remains and when it will be accomplished.<sup>2</sup> A discovery conference must be requested if more time is required to complete such discovery.

I. The following limitations on discovery are imposed:

1. ✓ The limitations set forth in Federal Rules of Civil Procedure 26(b), 30, and 33 apply, except as indicated below.
2. ✓ The maximum number of depositions by each party shall not exceed 35.
  - (a) \_\_\_\_ Depositions shall not exceed \_\_\_\_ hours as to any deponent.
  - (b) \_\_\_\_ Depositions shall not exceed \_\_\_\_ hours as to non-party deponents.

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<sup>2</sup>Such a stipulation does not require court approval.

(c) \_\_\_\_ Depositions shall not exceed \_\_\_\_ hours as to party<sup>3</sup> deponents.

3. ✓ The maximum number of interrogatories posed by each party shall not exceed 25 unless the parties agree otherwise.
4. ✓ The maximum number of requests for admissions posed by each party shall not exceed 50 unless the parties agree otherwise.
5. ✓ The parties agree that discovery should be propounded and noticed in the normal course, other than as set forth in this order, and there should be no discovery phases or limitations other than as provided in the Federal Rules of Civil Procedure.

J. Service of Discovery Requests and Responses: In accordance with Rules 5(b)(2)(E) and 6(d) of the Federal Rules of Civil Procedure, the parties agree that all written discovery requests and responses and objections, as well as Rule 26 disclosures, shall be served by electronic mail to the following counsel:

For plaintiff: Roger W. Yoerges (ryoerges@steptoe.com); Errol Patterson (epatterson@steptoe.com); Anthony Onorato (tony.onorato@fisherbroyles.com).

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<sup>3</sup>Unless otherwise specified, the court will consider corporate officer, Rule 30(b)(6) witness, and expert witness depositions to be subject to the time limitation applicable to party depositions.

For defendants: Brad Rosenberg (brad.rosenberg@usdoj.gov),  
Robin Thurston (robin.f.thurston@usdoj.gov) and Stuart Robinson  
(stuart.j.robinson@usdoj.gov).

V. Pretrial Motions

- A. ✓ Preliminary motions as to jurisdiction, venue, arbitration,  
and/or statutes of limitation shall be served and filed not later  
than:
1. ✓ Not applicable.
  2.      [Date:]
- B. ✓ Motions to amend, motions under the discovery rules, motions  
in limine, and dispositive motions:
1. ✓ shall be served and filed not later than the times  
specified by Local Rule 16.1(c)(6)-(8) and Rule 56(b),  
Federal Rules of Civil Procedure, except as indicated  
below.
  2. ✓ Plaintiff has served and filed a second amended  
complaint. Defendants' answer to that complaint  
remains due August 17, 2015.
  3. ✓ Motions under the discovery rules shall be served and  
filed not later than September 1, 2016.
  4. ✓ Motions in limine shall be served and filed not later  
than 30 days following the later of the date for the  
filing of dispositive motions or the date of the court's  
ruling on timely dispositive motions.

5.     ☒     Within 10 days of the close of all discovery, the parties shall submit to the court a proposed briefing schedule for dispositive motions.

VI.    Further Pretrial Proceedings

- A.     ☒     The parties have not requested a scheduling conference with the court.
- B.     ☒     The parties have not consented to all further proceedings in this case being before a United States magistrate judge.
- C.     ☒     With reference to the disclosure requirements of Rule 7.1, Federal Rules of Civil Procedure:
1.     ☒     The parties are in compliance.
2.     ☐     Compliance shall be accomplished on or before \_\_\_\_\_.
- D.     The parties have considered and reported to the court as regards possible alternative dispute resolution procedures. The use of ADR procedures appears premature at this time. The court will arrange for mediation assistance from a judge of this court upon request of the parties.
- E.     The court will schedule a pretrial conference for purposes of considering matters set out in Rule 16(c)(2), Federal Rules of Civil Procedure, upon the request of the parties. The court will call upon the parties to certify the case ready for trial when the times specified for discovery and motion practice have expired. The court will issue

an order governing final preparation for trial and scheduling a final pretrial conference when the case has been certified ready for trial.

- F. In the event that the parties have completed discovery before the discovery close date set in this scheduling and planning order, and if no dispositive motions are then pending or are to be filed by a party, counsel may jointly file a certificate that the case is ready for trial as provided by Local Civil Rule 40.3. When the time allowed for discovery and motion practice has passed and all pending dispositive motions have been ruled upon, the court will call upon the parties to certify the case ready for trial.

VII. Trial

It is estimated that this case will require 10 days for trial by court. If requested, the right to a jury trial is not disputed.

Dated at Anchorage, Alaska, this 24th day of July, 2015.

/s/ H. Russel Holland  
United States District Judge